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<p>1 Douglas Berlent</p> <p>2 going with this.</p> <p>3 MR. MONAGHAN: Thank you.</p> <p>4 I appreciate that. That helps.</p> <p>5 Q. Mr. Maxwell, were you, also, doing work</p> <p>6 for something called "Cats, Cats and More Cats"?</p> <p>7 A. I don't recall the name.</p> <p>8 Q. It's on Page 3 or however this is,</p> <p>9 horizontally.</p> <p>10 A. I would rely on the database to tell me</p> <p>11 what I did, but I did not sell any product to them,</p> <p>12 to the best of my recollection.</p> <p>13 Q. You have an entry here called, right</p> <p>14 under Gloryvision, "Jake's Doghouse." What is</p> <p>15 that?</p> <p>16 A. From what I recall, it was a catalogue</p> <p>17 of pet items.</p> <p>18 Q. Did you send my clients' CDs or any of</p> <p>19 them cassettes to Jake's Doghouse, pets.com, Pet</p> <p>20 Smart? Any of those?</p> <p>21 A. I would have to rely, solely, upon the</p> <p>22 database. I couldn't recall from memory.</p> <p>23 Q. The database reflected in this exhibit?</p> <p>24 A. Yes.</p> <p>25 Q. Well, please take a look.</p>	<p>1 Douglas Berlent</p> <p>2 activities of what I --</p> <p>3 Q. This music, the Plaintiffs' music?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Fine.</p> <p>6 Okay. Now, all right. Thank you.</p> <p>7 All right. Let's move on.</p> <p>8 And so the same would be true with</p> <p>9 respect to other entries that say "Sent Samples"?</p> <p>10 For example, you have pets.com, Sent Samples,</p> <p>11 mentioning Lisa Erikson, ring bells?</p> <p>12 A. No, it does not.</p> <p>13 Q. All right.</p> <p>14 A. But I would need to rely on what was</p> <p>15 present in this database because I'm the only</p> <p>16 person who would have entered that information.</p> <p>17 Q. And you were the person making the</p> <p>18 decisions as to whom the product would be sent?</p> <p>19 A. Yes.</p> <p>20 Q. Who did you deal with at The Orchard?</p> <p>21 A. At what time period?</p> <p>22 Q. Well, when was this database created?</p> <p>23 A. I do not know.</p> <p>24 Q. Okay. There's a name here, Brian</p> <p>25 Nicholas. Does that ring any bells?</p>
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<p>1 Douglas Berlent</p> <p>2 MR. SHELOWITZ: I don't know</p> <p>3 if I stapled it, the right way,</p> <p>4 but this is --</p> <p>5 THE WITNESS: If you could</p> <p>6 just -- You asked about Jake's</p> <p>7 Doghouse?</p> <p>8 MR. MONAGHAN: Right.</p> <p>9 THE WITNESS: So, if you</p> <p>10 can find Jake's Doghouse?</p> <p>11 MR. SHELOWITZ: Right</p> <p>12 here.</p> <p>13 THE WITNESS: Just go</p> <p>14 across to the right on that</p> <p>15 column. Is there a column</p> <p>16 that says "Materials Sent"?</p> <p>17 MR. MONAGHAN: Yeah. It</p> <p>18 says "Sent Samples."</p> <p>19 THE WITNESS: Sent Samples.</p> <p>20 So, if it says I sent a</p> <p>21 sample, I sent a sample.</p> <p>22 Q. How do you know those are a sample of</p> <p>23 our clients' product? Is this entire exhibit</p> <p>24 related to this case?</p> <p>25 A. It's related to this music. My</p>	<p>1 Douglas Berlent</p> <p>2 A. No, it does not.</p> <p>3 Q. Then there's a name on the document we</p> <p>4 will see or will see Sam Perlman. Does that name</p> <p>5 ring a bell?</p> <p>6 A. Yeah, Sam, I remember because he was</p> <p>7 the first person I spoke with when I got in contact</p> <p>8 with The Orchard.</p> <p>9 Q. Have we ever dealt with each other</p> <p>10 before, you and I, on any matter over the years?</p> <p>11 You look familiar.</p> <p>12 A. Not as far as I know.</p> <p>13 Q. Okay. Did you sell any physical</p> <p>14 product of the Plaintiffs? By that, I mean hard</p> <p>15 copies?</p> <p>16 A. Did I, personally --</p> <p>17 Q. Your company?</p> <p>18 A. -- sell? My company?</p> <p>19 Q. Media Right Productions?</p> <p>20 A. I know that we shipped, approximately,</p> <p>21 nine copies of the CD to The Orchard and, as far as</p> <p>22 my recollection, those are the only copies that I</p> <p>23 ever, personally, shipped for sale or potential</p> <p>24 sale.</p> <p>25 Q. When you say you shipped nine copies to</p>

<p style="text-align: right;">[125]</p> <p>1 Douglas Berlent</p> <p>2 The Orchard for sale, what was your understanding</p> <p>3 of how The Orchard would use those nine copies that</p> <p>4 you sent?</p> <p>5 A. The same way that they were going to</p> <p>6 use my music that I sent to them, that they would</p> <p>7 use their best efforts to sell and promote them.</p> <p>8 Q. I need the mechanics, though. How did</p> <p>9 they do it?</p> <p>10 A. I don't know.</p> <p>11 Q. Well, don't they have to convert the</p> <p>12 CDs and you didn't send them a master; correct?</p> <p>13 A. Master is --</p> <p>14 Q. -- term of art?</p> <p>15 A. -- an ambiguous term to me because</p> <p>16 every CD is, potentially, a master.</p> <p>17 Q. Right. And how is that the case?</p> <p>18 A. I sent to them, approximately, nine CDs</p> <p>19 of each title, from my recollection.</p> <p>20 Q. Right. And what did you understand</p> <p>21 they were going to do with them?</p> <p>22 A. Use their best efforts to promote and</p> <p>23 sell the music.</p> <p>24 Q. And how was the music to be delivered</p> <p>25 to the consumer?</p>	<p style="text-align: right;">[127]</p> <p>1 Douglas Berlent</p> <p>2 delivered the CDs to The Orchard, that they were</p> <p>3 going to sell it to iTunes because iTunes did not</p> <p>4 exist at that time.</p> <p>5 Q. Were there others that existed?</p> <p>6 Napster or some others?</p> <p>7 A. I do not recall.</p> <p>8 Q. When you sent those nine hard copies to</p> <p>9 The Orchard, was it your understanding they were</p> <p>10 going to sell hard copies, the actual CDs and</p> <p>11 cassettes?</p> <p>12 A. That was one of my understandings, yes.</p> <p>13 Q. What was your other understanding, if</p> <p>14 any?</p> <p>15 A. That they were going to do whatever</p> <p>16 they do to create sales of that music.</p> <p>17 Q. You have to be more specific. How were</p> <p>18 they going to do that?</p> <p>19 A. Honestly, I don't recall. I know, you</p> <p>20 know, some of the things that they --</p> <p>21 MR. SHELOWITZ: There's no</p> <p>22 question.</p> <p>23 THE WITNESS: No question.</p> <p>24 Okay.</p> <p>25 MR. SHELOWITZ: You answered</p>
<p style="text-align: right;">[126]</p> <p>1 Douglas Berlent</p> <p>2 A. That wasn't really my -- I'm not</p> <p>3 involved. The Orchard, I didn't know how they</p> <p>4 were, you know, all the various things that they</p> <p>5 were doing.</p> <p>6 Q. Well, do they sell hard copies?</p> <p>7 A. That was one of the things that they</p> <p>8 sold.</p> <p>9 Q. Okay. And, when you sent them nine,</p> <p>10 were you sending that for the purpose of testing</p> <p>11 the waters to see how well those would do?</p> <p>12 A. It wasn't a test. They asked me to</p> <p>13 send, from my recollection, approximately,</p> <p>14 10 copies of all of our titles and that's what we</p> <p>15 did.</p> <p>16 Q. I understand. And, when you sent them,</p> <p>17 did you understand they were going to use any of</p> <p>18 those as masters for the purpose of distributing it</p> <p>19 to eTailers, such as iTunes?</p> <p>20 A. To the best of my recollection, iTunes</p> <p>21 didn't exist then.</p> <p>22 Q. Then your answer would be you didn't</p> <p>23 understand that to be the case?</p> <p>24 A. I did not understand that to be the</p> <p>25 case that they were going to, at that time when I</p>	<p style="text-align: right;">[128]</p> <p>1 Douglas Berlent</p> <p>2 the question.</p> <p>3 Q. Okay. I'm going to ask you: What were</p> <p>4 you about to say? There's the question.</p> <p>5 A. I don't remember what I was about to</p> <p>6 say.</p> <p>7 Q. You started with "honestly."</p> <p>8 A. I don't recall.</p> <p>9 Q. Did you or anybody that you contacted</p> <p>10 in connection with my clients' CDs, tapes and</p> <p>11 cassettes sell any of those CDs, cassettes or</p> <p>12 tapes, that includes you or anyone else that you</p> <p>13 contacted, including The Orchard?</p> <p>14 A. Can you state the question again for</p> <p>15 me, please?</p> <p>16 Q. How many copies of Cats and Dogs or any</p> <p>17 of the CDs or tapes were sold through your company,</p> <p>18 either directly or indirectly?</p> <p>19 A. I do not know.</p> <p>20 Q. Did you ever pay any money to my</p> <p>21 clients for the sale of any of the CDs or</p> <p>22 cassettes?</p> <p>23 A. No, I did not.</p> <p>24 Q. Did you ever account to the Plaintiffs</p> <p>25 prior to this litigation for any sales of CDs or</p>

<p style="text-align: right;">[129]</p> <p>1 Douglas Berlent</p> <p>2 cassettes that had been provided to you?</p> <p>3 A. No, I did not.</p> <p>4 Q. How long was the Media Right Product</p> <p>5 Representation Agreement? What was the term of</p> <p>6 that? How long was it to last?</p> <p>7 A. I understood it to still be in effect</p> <p>8 and it was to last until one of the parties</p> <p>9 canceled it.</p> <p>10 Q. Reading the last paragraph, "The term</p> <p>11 of this agreement shall be thirty-six months from</p> <p>12 the date of signing unless terminated as specified</p> <p>13 by the agreement," is that what you're referring</p> <p>14 to?</p> <p>15 MR. SHELOWITZ: Objection</p> <p>16 to the form.</p> <p>17 You asked him what his</p> <p>18 understanding was and he</p> <p>19 testified about what his</p> <p>20 understanding was.</p> <p>21 MR. MONAGHAN: Yeah.</p> <p>22 Q. Was that the paragraph that you had in</p> <p>23 mind when you gave that answer?</p> <p>24 A. No, it was not.</p> <p>25 Q. Okay. What language in the Agreement</p>	<p style="text-align: right;">[131]</p> <p>1 Douglas Berlent</p> <p>2 A. Yes, I did.</p> <p>3 Q. And what words did I read to you that</p> <p>4 gave more than 36 months?</p> <p>5 MR. SHELOWITZ: Objection.</p> <p>6 The contract speaks for itself.</p> <p>7 MR. MONAGHAN: That's not</p> <p>8 the question. The question was:</p> <p>9 Was there anything in what I just</p> <p>10 read that his understanding</p> <p>11 suggests gave him more than</p> <p>12 36 months? I'm going to ask him</p> <p>13 what words were there?</p> <p>14 MR. SHELOWITZ: If you want</p> <p>15 him to reread it, you can ask him</p> <p>16 that. If you want to hear it</p> <p>17 again or you want to read,</p> <p>18 whatever you think.</p> <p>19 MR. MONAGHAN: You need to</p> <p>20 read the language again?</p> <p>21 MR. SHELOWITZ: Or you can</p> <p>22 look at it, whatever you want.</p> <p>23 THE WITNESS: Based on what</p> <p>24 you just read to me --</p> <p>25 MR. MONAGHAN: Yeah.</p>
<p style="text-align: right;">[130]</p> <p>1 Douglas Berlent</p> <p>2 provides that it is indefinite unless terminated?</p> <p>3 A. That was my understanding of the</p> <p>4 Agreement, as I recall.</p> <p>5 Q. Okay. Now, I'm going to read that</p> <p>6 entire paragraph and ask you if it squares with</p> <p>7 your understanding. "The term of this agreement</p> <p>8 shall be thirty-six months from the date of signing</p> <p>9 unless terminated as specified by the agreement.</p> <p>10 This representation of Songs For Dogs and Songs For</p> <p>11 Cats by Media Right Productions, may be canceled by</p> <p>12 either party with written notification provided at</p> <p>13 least 30 days prior to the desired termination</p> <p>14 date." Did you hear what I just read, Mr. Maxwell?</p> <p>15 A. Yes, I did.</p> <p>16 Q. Okay. Was that your understanding of</p> <p>17 the provisions for the term of the Agreement and</p> <p>18 termination of the Agreement?</p> <p>19 A. That was not my understanding of what I</p> <p>20 recalled the terms to be of the Agreement.</p> <p>21 Q. Did you draft that clause?</p> <p>22 A. I do not recall if it was myself or</p> <p>23 Ellen or a combination of both of us.</p> <p>24 Q. Do you understand what I just read you</p> <p>25 to give you more than 36 months?</p>	<p style="text-align: right;">[132]</p> <p>1 Douglas Berlent</p> <p>2 THE WITNESS: Could you now</p> <p>3 ask me the question that you</p> <p>4 would like to know?</p> <p>5 Q. Okay. Doesn't that mean that the</p> <p>6 outside limit of the Agreement is 36 months unless</p> <p>7 sooner terminated?</p> <p>8 A. Based on what you read, yes. I would</p> <p>9 think so.</p> <p>10 Q. Were there any written amendments to</p> <p>11 this Agreement?</p> <p>12 A. Not that I recall.</p> <p>13 Q. And, to the best of your knowledge, was</p> <p>14 the Agreement ever terminated by either side,</p> <p>15 formally, by a writing?</p> <p>16 A. No, it was not terminated.</p> <p>17 Q. And you acknowledge, sir, there should</p> <p>18 have been some payments made to the Plaintiffs,</p> <p>19 some payments; isn't that right?</p> <p>20 A. Yes, I do acknowledge.</p> <p>21 Q. And you acknowledge there should have</p> <p>22 been an accounting to Plaintiffs at some point;</p> <p>23 correct?</p> <p>24 A. Yes, I do.</p> <p>25 Q. And who, within your company, had the</p>

<p style="text-align: right;">[133]</p> <p>1 Douglas Berlent</p> <p>2 responsibility for rendering an accounting to the</p> <p>3 Plaintiffs?</p> <p>4 A. Myself.</p> <p>5 Q. Who had the responsibility for making</p> <p>6 payment to the Plaintiffs?</p> <p>7 A. Myself.</p> <p>8 Q. Did you ever enter into an agreement</p> <p>9 with The Orchard, a written agreement regarding the</p> <p>10 sales of the Plaintiffs' CDs and tapes?</p> <p>11 A. I believe yes, I did enter an agreement</p> <p>12 with The Orchard and part of that agreement was to</p> <p>13 sell Plaintiffs' CDs and tapes along with my music.</p> <p>14 Q. Okay. I'm going to show you now --</p> <p>15 MR. SHELOWITZ: I think</p> <p>16 we have a copy of that.</p> <p>17 MR. MONAGHAN: You have it?</p> <p>18 MR. SHELOWITZ: Yeah.</p> <p>19 Q. Mr. Shelowitz is related to you; isn't</p> <p>20 he, Mr. Maxwell? Is he a cousin or something?</p> <p>21 A. Not by blood.</p> <p>22 THE WITNESS: What does</p> <p>23 this say?</p> <p>24 MR. SHELOWITZ: This is</p> <p>25 a letter, February 1st, 2000,</p>	<p style="text-align: right;">[135]</p> <p>1 Douglas Berlent</p> <p>2 "Music For Lovemaking</p> <p>3 "Music For Lovemaking II</p> <p>4 "Sounds Of The Womb</p> <p>5 "A Celebration Of Motherhood</p> <p>6 "Songs For Dogs</p> <p>7 "Songs For Cats</p> <p>8 "Golf's Greatest Hits I</p> <p>9 "Cigar Smokin' Sounds</p> <p>10 "Primal Pounding</p> <p>11 "H2Overtures," it looks like.</p> <p>12 "Being The Best," and it</p> <p>13 continues, "Thank you, and I look</p> <p>14 forward to great success."</p> <p>15 "Yours truly," it's printed</p> <p>16 "Doug Maxwell" and signature, and</p> <p>17 he's going to ask you if that's</p> <p>18 your signature.</p> <p>19 Q. Is that your signature, Mr. Maxwell?</p> <p>20 A. Yes, it is.</p> <p>21 Q. Okay. Is this letter dated</p> <p>22 February 1st, 2000?</p> <p>23 A. Yes, it is.</p> <p>24 Q. Can you tell me how it is you were</p> <p>25 telling Mr. Perlman on February 1st that you were</p>
<p style="text-align: right;">[134]</p> <p>1 Douglas Berlent</p> <p>2 Sam Perlman, The Orchard.</p> <p>3 "This letter confirms" --</p> <p>4 I'm going to read it, if I can</p> <p>5 help Doug, for the record.</p> <p>6 MR. MONAGHAN: Yeah. Sure.</p> <p>7 MR. SHELOWITZ: This is a</p> <p>8 letter dated February 1st, 2000.</p> <p>9 It's to Sam Perlman at The Orchard.</p> <p>10 The letterhead says "Media Right</p> <p>11 Productions."</p> <p>12 Says, "Dear Sam,</p> <p>13 "This letter confirms our</p> <p>14 conversation of today:</p> <p>15 "The audio CD titles listed</p> <p>16 below will be distributed by The</p> <p>17 Orchard under the terms and</p> <p>18 conditions listed in your</p> <p>19 distribution agreement.</p> <p>20 "My signature below confirms</p> <p>21 our acceptance of all your</p> <p>22 specified terms and conditions."</p> <p>23 And then it says, in bold</p> <p>24 caps, not bold but caps, "TITLES</p> <p>25 FOR DISTRIBUTION:</p>	<p style="text-align: right;">[136]</p> <p>1 Douglas Berlent</p> <p>2 gonna let him distribute these titles from my</p> <p>3 clients when the Agreement, the Product Rep</p> <p>4 Agreement, isn't dated until -- isn't signed by you</p> <p>5 until the 7th of February, six days later, and by</p> <p>6 my client, Ellen Bernfeld, 23 days later,</p> <p>7 February 24th, 2000?</p> <p>8 A. I can do my best to offer a number of</p> <p>9 explanations.</p> <p>10 Q. I just want a truthful explanation.</p> <p>11 A. The truthful explanation would then be,</p> <p>12 to the best of my recollection, I don't know how</p> <p>13 that happened, specifically.</p> <p>14 Q. Okay. That's fine.</p> <p>15 But you agree with me that you,</p> <p>16 actually, were telling Mr. Perlman and giving The</p> <p>17 Orchard rights that you had no written agreement to</p> <p>18 give them as of February 1st, 2000, whatever your</p> <p>19 construction is of the Product Rep Agreement?</p> <p>20 A. I can't agree with that because any of</p> <p>21 explanations I would offer that are plausible</p> <p>22 within my world, such as I can't see, proofreading,</p> <p>23 whether 1 is 7 or know which dates apply going back</p> <p>24 that far, but I can tell you, truthfully, from the</p> <p>25 understanding that Ellen and I shared, she knew</p>

<p style="text-align: right;">[137]</p> <p>1 Douglas Berlent</p> <p>2 about The Orchard because it was the main premise</p> <p>3 of our discussion at that time. She was excited by</p> <p>4 it and knew that that was one of the main things</p> <p>5 that was underway. I would not have sent the</p> <p>6 titles without her authorization or knowing about</p> <p>7 it. I, unfortunately, can't tell you the exact</p> <p>8 details of what transpired, eight years ago, that</p> <p>9 accounts for why there's a discrepancy in the date,</p> <p>10 but I can swear under oath that I did not send the</p> <p>11 materials to The Orchard without your client Ellen</p> <p>12 Bernfeld's knowledge.</p> <p>13 Q. Now, did you say, a moment ago, you</p> <p>14 can't tell a 1 from a 7?</p> <p>15 A. I offered that as a possible</p> <p>16 explanation of what could have happened.</p> <p>17 Q. Are you talking about the date next to</p> <p>18 your signature; right?</p> <p>19 MR. SHELOWITZ: You're</p> <p>20 both looking at two different</p> <p>21 agreements. He's looking at</p> <p>22 the --</p> <p>23 MR. MONAGHAN: Please show</p> <p>24 him the second page, the</p> <p>25 signature page.</p>	<p style="text-align: right;">[139]</p> <p>1 Douglas Berlent</p> <p>2 question is: Do I see vagueness</p> <p>3 in my signature date, the answer</p> <p>4 is not, but supporting truthfulness</p> <p>5 of what I said, how was I to get</p> <p>6 the copies I sent to The Orchard</p> <p>7 if not from Ellen Bernfeld, herself?</p> <p>8 MR. MONAGHAN: I can't answer</p> <p>9 that question. I can only ask the</p> <p>10 questions.</p> <p>11 THE WITNESS: I understand and</p> <p>12 I, respectfully, I'm just trying to</p> <p>13 say.</p> <p>14 Q. You agree with me that you provided</p> <p>15 copies of my clients' CDs to Mr. Perlman at The</p> <p>16 Orchard before there was a signed Agreement; isn't</p> <p>17 that right? Yes or no?</p> <p>18 A. I cannot agree to that, definitively,</p> <p>19 from the best of my recollection because I don't</p> <p>20 think I would have done that.</p> <p>21 Q. Okay. All right.</p> <p>22 Now, your letter to Mr. Perlman,</p> <p>23 February 1st, Maxwell-4 says, "The audio CD titles</p> <p>24 listed below will be distributed by The Orchard</p> <p>25 under the terms and conditions listed in your</p>
<p style="text-align: right;">[138]</p> <p>1 Douglas Berlent</p> <p>2 MR. SHELOWITZ: This is the</p> <p>3 Product Representation Agreement.</p> <p>4 That's the one he's talking about.</p> <p>5 THE WITNESS: Right.</p> <p>6 Q. Is that what you were referring to?</p> <p>7 A. No.</p> <p>8 Q. Well, what was the 1 and 7?</p> <p>9 MR. SHELOWITZ: This, here,</p> <p>10 is the letter to Orchard.</p> <p>11 THE WITNESS: Mitch and</p> <p>12 yourself had instructed me that</p> <p>13 this letter was from February 1st.</p> <p>14 You asked about how there could</p> <p>15 be a discrepancy that I could</p> <p>16 send the CD to The Orchard when</p> <p>17 the Agreement that we signed was</p> <p>18 on the 7th.</p> <p>19 MR. MONAGHAN: No. I'm</p> <p>20 suggesting that my client signed</p> <p>21 it on February 24th and I don't</p> <p>22 see any vagueness in her date.</p> <p>23 Do you? If you look at the</p> <p>24 signature page, it says "2/24."</p> <p>25 THE WITNESS: If your</p>	<p style="text-align: right;">[140]</p> <p>1 Douglas Berlent</p> <p>2 distribution agreement." That's what it said.</p> <p>3 Did you have a separate distribution</p> <p>4 agreement with The Orchard?</p> <p>5 A. I do not recall. What do you mean by</p> <p>6 separate?</p> <p>7 Q. Well, did you have a distribution</p> <p>8 agreement with The Orchard?</p> <p>9 A. Yes.</p> <p>10 Q. All right. Is that anywhere in this</p> <p>11 room, to your knowledge?</p> <p>12 MR. SHELOWITZ: Maybe,</p> <p>13 you want to show him</p> <p>14 something? He can't see</p> <p>15 what's right in front of</p> <p>16 his face.</p> <p>17 Q. Did you provide a copy of the</p> <p>18 distribution agreement with The Orchard to us in</p> <p>19 your document production?</p> <p>20 A. I, personally, did not.</p> <p>21 Q. Were you aware that any such agreement</p> <p>22 had been provided to us?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And is that distribution</p> <p>25 agreement Maxwell Exhibit 5?</p>

<p style="text-align: right;">[141]</p> <p>1 Douglas Berlent</p> <p>2 All right. Exhibit 5 is a two-page</p> <p>3 document. It's bearing Bates 17 and 18. It has a</p> <p>4 reference up top "Paul Millman, Esquire," with some</p> <p>5 phone numbers, date of July 18, 2007. Prior fax</p> <p>6 date of 5/29/2007, Paul Millman.</p> <p>7 Below that, "From: The Orchard,</p> <p>8 May 10, 2007," and I mean, to me, this appears to</p> <p>9 be a document that your prior Counsel, Paul</p> <p>10 Millman, obtained, directly, from The Orchard.</p> <p>11 Does that sound correct?</p> <p>12 A. That does sound correct.</p> <p>13 Q. Okay. And that's your understanding?</p> <p>14 A. That is my understanding.</p> <p>15 Q. You didn't have a copy of this</p> <p>16 agreement, either?</p> <p>17 A. No, I did not.</p> <p>18 Q. Okay. What happened to -- Is there a</p> <p>19 signature page with this agreement?</p> <p>20 A. Is that a question I should answer?</p> <p>21 Q. Yeah. Is there a signature page with</p> <p>22 this agreement?</p> <p>23 A. I don't recall.</p> <p>24 Q. How do you know this is your</p> <p>25 distribution agreement?</p>	<p style="text-align: right;">[143]</p> <p>1 Douglas Berlent</p> <p>2 February 1st, Exhibit 4, refers to "audio CD</p> <p>3 titles"; correct? Do you remember that phrase?</p> <p>4 Your Counsel, Mr. Shelowitz, read it.</p> <p>5 A. Is that --</p> <p>6 MR. SHELOWITZ: The document</p> <p>7 says "TITLES FOR DISTRIBUTION,"</p> <p>8 and it says, in the sentence, "The</p> <p>9 audio CD titles listed below will</p> <p>10 be distributed by The Orchard under</p> <p>11 the terms and conditions listed in</p> <p>12 your distribution agreement."</p> <p>13 Q. Does the reference -- Does the word</p> <p>14 "titles" -- Is the word "titles" synonymous to you</p> <p>15 with CDs and tapes?</p> <p>16 A. No.</p> <p>17 Q. Okay. How is it different?</p> <p>18 A. Rhetorically, are you asking in the</p> <p>19 broad sense of why a title is different?</p> <p>20 Q. In the sense of this transaction?</p> <p>21 A. Could you restate the question, please?</p> <p>22 Q. You said it was different, titles</p> <p>23 doesn't mean the same thing as CDs and tapes, and I</p> <p>24 said how is it different in your mind? And you</p> <p>25 said in the broad sense? And I said no, in this</p>
<p style="text-align: right;">[142]</p> <p>1 Douglas Berlent</p> <p>2 A. I would rely on The Orchard producing</p> <p>3 my distribution agreement by the request of my</p> <p>4 Counsel.</p> <p>5 Q. Is this just a standard distribution</p> <p>6 agreement --</p> <p>7 MR. SHELOWITZ: Objection.</p> <p>8 MR. MONAGHAN: Let me just</p> <p>9 finish.</p> <p>10 -- standard distribution</p> <p>11 agreement that you understand</p> <p>12 as obtained from The Orchard</p> <p>13 and you are supposing this is,</p> <p>14 in fact, the one that you had</p> <p>15 at the time?</p> <p>16 THE WITNESS: Yes, I'm</p> <p>17 making that supposition.</p> <p>18 Q. Okay. So, you don't, actually, have a</p> <p>19 copy of the distribution agreement which is</p> <p>20 referred to in the letter of February 1st to Sam</p> <p>21 Perlman, the exhibit I just asked you about which</p> <p>22 was Number 4; is that right?</p> <p>23 A. No, I do not, actually, have a copy of</p> <p>24 that agreement.</p> <p>25 Q. Okay. Now, I notice that the letter of</p>	<p style="text-align: right;">[144]</p> <p>1 Douglas Berlent</p> <p>2 transaction?</p> <p>3 A. They were referenced as to how the</p> <p>4 music was being delivered to The Orchard for</p> <p>5 distribution.</p> <p>6 Q. You were delivering titles and your</p> <p>7 Product Representation Agreement referred to CDs</p> <p>8 and tapes. Didn't use the word "titles"; did it?</p> <p>9 A. Used recordings.</p> <p>10 Q. Okay.</p> <p>11 A. So, the title of the recordings.</p> <p>12 Q. Right. And you told us, earlier, that</p> <p>13 among the activities that The Orchard was to</p> <p>14 perform for you was, actually, selling hard copies</p> <p>15 of my clients' CDs and tapes; am I right?</p> <p>16 Didn't you say that, earlier?</p> <p>17 A. Yes.</p> <p>18 Q. But did you, actually, deliver hard</p> <p>19 copies to The Orchard or did you deliver titles?</p> <p>20 What did you give them?</p> <p>21 A. I delivered the items that are here on</p> <p>22 the table in exhibits.</p> <p>23 Q. I think you said nine --</p> <p>24 A. Approximately.</p> <p>25 Q. -- correct? Approximately, nine?</p>

<p style="text-align: right;">[145]</p> <p>1 Douglas Berlent</p> <p>2 A. Approximately, nine.</p> <p>3 Q. How were you able to recall that with</p> <p>4 that degree of specificity?</p> <p>5 A. Because, through the course of this</p> <p>6 litigation, it had come to my attention, through</p> <p>7 The Orchard's database, how many he logged in as</p> <p>8 receiving.</p> <p>9 Q. I see.</p> <p>10 And The Orchard agreement that you gave</p> <p>11 me, which you suppose was the agreement that you</p> <p>12 had, talks about selling the recordings in eStores;</p> <p>13 is that right?</p> <p>14 Do you need me to read that or have</p> <p>15 Mr. Shelowitz read it?</p> <p>16 A. I would trust you if you tell me that's</p> <p>17 what it says and I would, of course, agree.</p> <p>18 Q. You don't have to agree with me.</p> <p>19 A. Okay then.</p> <p>20 Q. I've been wrong many many times.</p> <p>21 A. Well then.</p> <p>22 Q. I will read it.</p> <p>23 "We agree to provide you" --</p> <p>24 Now, are we in agreement that the "we"</p> <p>25 here is Media Right Productions and the "you" is</p>	<p style="text-align: right;">[147]</p> <p>1 Douglas Berlent</p> <p>2 here that says The Orchard is going to sell hard</p> <p>3 copies?</p> <p>4 MR. SHELOWITZ: Again, you</p> <p>5 can ask him what his understanding</p> <p>6 of the agreement is. I can look</p> <p>7 here and find a place where it</p> <p>8 says --</p> <p>9 MR. MONAGHAN: No. Please.</p> <p>10 MR. SHELOWITZ: It says it</p> <p>11 right here, but you're putting</p> <p>12 words into his mouth. His</p> <p>13 understanding, please ask him</p> <p>14 everything you want.</p> <p>15 If you want to ask what's</p> <p>16 written in the agreement, I see</p> <p>17 here, "You agree to supply us</p> <p>18 with compact discs." It's a</p> <p>19 two-page agreement. If this</p> <p>20 is the agreement, whatever it</p> <p>21 says, it says. We don't object</p> <p>22 to what it says.</p> <p>23 If you want to ask what</p> <p>24 his understanding is, of course,</p> <p>25 he will be more than happy to</p>
<p style="text-align: right;">[146]</p> <p>1 Douglas Berlent</p> <p>2 The Orchard?</p> <p>3 MR. SHELOWITZ: I think we can</p> <p>4 agree.</p> <p>5 MR. MONAGHAN: If that's what</p> <p>6 the contract says?</p> <p>7 Q. Okay. "We agree to provide you</p> <p>8 throughout the Territory and during the Sales</p> <p>9 Period with listing of your Recordings in E-Stores</p> <p>10 during the Term. We will pay you Seventy (70%)</p> <p>11 percent of our Net Income, accounted for quarterly</p> <p>12 (please see www.theorchard.com for Accounting and</p> <p>13 Payment Policy), which directly results from sales</p> <p>14 of any of your Recordings."</p> <p>15 Isn't this agreement limited to sales</p> <p>16 of electronic media?</p> <p>17 MR. SHELOWITZ: Objection.</p> <p>18 The document speaks for itself.</p> <p>19 MR. MONAGHAN: Well, it</p> <p>20 does speak for itself, but I</p> <p>21 can't see anything here other</p> <p>22 than dealing with E-Sales,</p> <p>23 electronic media.</p> <p>24 Q. You've had an opportunity to look at</p> <p>25 this agreement, I'm sure. Is there anything in</p>	<p style="text-align: right;">[148]</p> <p>1 Douglas Berlent</p> <p>2 share that with you.</p> <p>3 Q. There came a time when you received</p> <p>4 some payments from The Orchard for sales of my</p> <p>5 clients' products; isn't that right?</p> <p>6 A. Yes.</p> <p>7 Q. And when was that?</p> <p>8 A. I do not know.</p> <p>9 Q. Do you have a copy of 7, which is your</p> <p>10 document production?</p> <p>11 A. Yes.</p> <p>12 MR. SHELOWITZ: Yes,</p> <p>13 we do.</p> <p>14 Q. Okay. Mr. Maxwell, there are a batch</p> <p>15 of checks, copies of front and backs of checks</p> <p>16 payable to Media Right Productions from The</p> <p>17 Orchard. The first one is August '04. The second</p> <p>18 one is February '05. The third one is August '05.</p> <p>19 The fourth one is May '05. November '05 is the</p> <p>20 next one. February '06, May '06, August '06,</p> <p>21 November '06, August '07, May '07, February '07.</p> <p>22 The checks in the time frame I just described, do</p> <p>23 these checks from The Orchard to Media Right</p> <p>24 Productions, in part or whole, represent the</p> <p>25 payments received by Media Right with respect to my</p>

<p style="text-align: right;">[149]</p> <p>1 Douglas Berlent</p> <p>2 clients' products? In part or in whole?</p> <p>3 A. I do not recall.</p> <p>4 Q. Can you tell us why you gave us these</p> <p>5 checks in the document production?</p> <p>6 A. Because your question said these</p> <p>7 checks, in part or in whole, represent any payments</p> <p>8 to your client and I'm not sure which checks,</p> <p>9 specifically, would contain payments to your</p> <p>10 client.</p> <p>11 MR. SHELOWITZ: For the</p> <p>12 record, these were produced</p> <p>13 by The Orchard, these checks --</p> <p>14 MR. MONAGHAN: Right.</p> <p>15 As a Defendant in this case.</p> <p>16 MR. SHELOWITZ: As Defendant</p> <p>17 in this case.</p> <p>18 Q. Okay. Have you had a chance to look at</p> <p>19 any of these checks, Mr. Maxwell?</p> <p>20 A. No, I have not.</p> <p>21 Q. And, when you got a check from The</p> <p>22 Orchard, it was accompanied by some sort of</p> <p>23 accounting or a statement?</p> <p>24 A. No, it was not.</p> <p>25 Q. How did you know whether you were</p>	<p style="text-align: right;">[151]</p> <p>1 Douglas Berlent</p> <p>2 Productions?</p> <p>3 A. I would have to ask my Counsel if this</p> <p>4 was that document.</p> <p>5 Q. Well, go ahead.</p> <p>6 THE WITNESS: Is this the</p> <p>7 accounting presented to us by</p> <p>8 The Orchard?</p> <p>9 MR. SHELOWITZ: These were</p> <p>10 documents, all the data you see</p> <p>11 showing the royalties and numbers</p> <p>12 of sales. All of that has been</p> <p>13 produced by The Orchard as</p> <p>14 requested, again, by prior Counsel</p> <p>15 and it was turned over, several</p> <p>16 times, I think to your good</p> <p>17 offices.</p> <p>18 MR. MONAGHAN: Right.</p> <p>19 Q. This document - was a document like</p> <p>20 this produced to you in the course of the</p> <p>21 relationship with The Orchard showing sales?</p> <p>22 A. No, it was not.</p> <p>23 Q. Again, you just, simply, trusted The</p> <p>24 Orchard to pay you what you were entitled to?</p> <p>25 A. I did make an attempt, at one point, to</p>
<p style="text-align: right;">[150]</p> <p>1 Douglas Berlent</p> <p>2 getting paid what you were supposed to get paid?</p> <p>3 Just trusted them?</p> <p>4 A. I did.</p> <p>5 Q. Well then, sitting here today, do you</p> <p>6 have any idea of how much money was made on the</p> <p>7 sales of Songs For Dogs or Songs For Cats?</p> <p>8 A. Yes, I do.</p> <p>9 Q. How much?</p> <p>10 A. The amount paid to Media Right</p> <p>11 Productions is, approximately, \$382.00.</p> <p>12 Q. Right now, you're able to say that very</p> <p>13 definitively with certainty, and how did you come</p> <p>14 to that conclusion?</p> <p>15 A. An accounting was provided.</p> <p>16 Q. By?</p> <p>17 A. The Orchard.</p> <p>18 Q. Where is that accounting?</p> <p>19 A. I believe its been presented to you as</p> <p>20 part of the documents.</p> <p>21 Q. Can you look at Bates Page 19 in the</p> <p>22 exhibit?</p> <p>23 A. Okay.</p> <p>24 Q. Is that one of the accountings or an</p> <p>25 accounting from The Orchard to Media Right</p>	<p style="text-align: right;">[152]</p> <p>1 Douglas Berlent</p> <p>2 try to understand how to log onto their system, but</p> <p>3 I couldn't read it and I couldn't navigate through</p> <p>4 it.</p> <p>5 So, in answer to your question, I did</p> <p>6 trust them.</p> <p>7 Q. So, why shouldn't we assume that all</p> <p>8 these checks that you gave us from The Orchard</p> <p>9 pertain to our client?</p> <p>10 A. Because the accounting that they</p> <p>11 provided shows otherwise.</p> <p>12 Q. You just told us they didn't give you</p> <p>13 an accounting.</p> <p>14 A. The accounting that they provided,</p> <p>15 which you asked me to look at.</p> <p>16 Q. This document that was produced in this</p> <p>17 lawsuit is the accounting that you're talking</p> <p>18 about?</p> <p>19 A. Yes.</p> <p>20 Q. And this document didn't even exist</p> <p>21 before this lawsuit was filed; did it?</p> <p>22 MR. SHELOWITZ: Objection.</p> <p>23 MR. MONAGHAN: To your</p> <p>24 knowledge?</p> <p>25 THE WITNESS: I would</p>

<p style="text-align: right;">[153]</p> <p>1 Douglas Berlent</p> <p>2 assume that it did exist, but</p> <p>3 not in printed form. I do not</p> <p>4 have it nor was I given it.</p> <p>5 Q. Okay. So, does this confirm to you</p> <p>6 that these various iTunes and eTailors of music,</p> <p>7 actually, had my clients' music available for sale?</p> <p>8 MR. SHELOWITZ: Objection.</p> <p>9 MR. MONAGHAN: If you</p> <p>10 know?</p> <p>11 THE WITNESS: I did not</p> <p>12 know.</p> <p>13 Q. So, let me understand this. You gave -</p> <p>14 You, Media Right Production, you gave Media Right</p> <p>15 Productions --</p> <p>16 MR. SHELOWITZ: The Orchard.</p> <p>17 MR. MONAGHAN: I'm sorry.</p> <p>18 Yeah.</p> <p>19 Q. You, Media -- You, Media Right</p> <p>20 Productions --</p> <p>21 MR. SHELOWITZ: I didn't</p> <p>22 do anything.</p> <p>23 MR. MONAGHAN: -- gave</p> <p>24 The Orchard these titles to</p> <p>25 sell; is that right? The titles,</p>	<p style="text-align: right;">[155]</p> <p>1 Douglas Berlent</p> <p>2 in 2004.</p> <p>3 Q. But this was an agreement that was</p> <p>4 entered in 2000; correct?</p> <p>5 A. Correct.</p> <p>6 Q. And you gave it to The Orchard in the</p> <p>7 year 2000; correct?</p> <p>8 A. Correct.</p> <p>9 Q. So, it's your understanding there</p> <p>10 wasn't a sale of a single digital download of this</p> <p>11 music before the earliest date of one of these</p> <p>12 checks?</p> <p>13 A. It's my understanding because I didn't</p> <p>14 get paid for any sales on any of the music that</p> <p>15 they had for that period. I did not receive any</p> <p>16 payment from The Orchard.</p> <p>17 Q. So, what accounted for this sudden</p> <p>18 resurgence in interest in our clients' music?</p> <p>19 MR. SHELOWITZ: Objection</p> <p>20 to the form.</p> <p>21 Q. Do you have any idea why, all of a</p> <p>22 sudden, if there are not too many copies as far as</p> <p>23 you folks are concerned, what happened in 2004 or</p> <p>24 2005 that caused this music to be sold when,</p> <p>25 apparently, as far as you know, it wasn't sold at</p>
<p style="text-align: right;">[154]</p> <p>1 Douglas Berlent</p> <p>2 my clients' titles?</p> <p>3 THE WITNESS: Yes, I did.</p> <p>4 Q. You gave them to them, and, sitting</p> <p>5 here today, before this litigation and before we</p> <p>6 got this production, you had no accounting from The</p> <p>7 Orchard as to the sales, no formal written</p> <p>8 accounting as to the sales of my clients' products;</p> <p>9 is that right?</p> <p>10 A. No, I did not.</p> <p>11 Q. How about your own compositions that</p> <p>12 were being sold through The Orchard, did you get an</p> <p>13 accounting on those?</p> <p>14 A. The accounting was made available to</p> <p>15 any Orchard client, but it was made available on an</p> <p>16 on-line format and so I never checked because I</p> <p>17 wasn't able to navigate through the on-line format.</p> <p>18 Q. These checks that The Orchard just</p> <p>19 produced are of relatively recent vintage; aren't</p> <p>20 they? I don't think any one of them is older than</p> <p>21 2005. Did you hear me list the dates?</p> <p>22 A. Yes, I did.</p> <p>23 Q. You didn't hear me say anything before</p> <p>24 2005; did you?</p> <p>25 A. Actually, I did hear you say something</p>	<p style="text-align: right;">[156]</p> <p>1 Douglas Berlent</p> <p>2 all from 2000 to 2004 or 5?</p> <p>3 A. I would not know.</p> <p>4 (Recess taken.)</p> <p>5 Q. Do you know what mechanical license is,</p> <p>6 Mr. Maxwell?</p> <p>7 MR. SHELOWITZ: Asked and</p> <p>8 answered.</p> <p>9 MR. MONAGHAN: It's okay.</p> <p>10 I don't remember.</p> <p>11 I'm going to ask it again.</p> <p>12 THE WITNESS: Yes.</p> <p>13 Q. Okay. What is it?</p> <p>14 A. In my understanding of it, it's a fee</p> <p>15 that you pay to the owner of the song copyright for</p> <p>16 use of their song on a CD.</p> <p>17 Q. Okay. My question and your Counsel</p> <p>18 said I asked you about mechanical royalties before.</p> <p>19 Now, I'm asking about a mechanical license. What</p> <p>20 does a mechanical license entitle the licensee to</p> <p>21 do and what is it the licensor is licensing?</p> <p>22 Isn't it the right to make copies?</p> <p>23 A. From my understanding of how I've</p> <p>24 understood a mechanical license --</p> <p>25 Q. Uh-huh.</p>

<p style="text-align: right;">[157]</p> <p>1 Douglas Berlent</p> <p>2 A. -- I think it's a royalty that you pay</p> <p>3 to the writer/publisher of a song independent of</p> <p>4 the recording.</p> <p>5 Q. But isn't it based on the number of</p> <p>6 copies?</p> <p>7 A. Number of copies sold, I believe.</p> <p>8 Q. Yeah.</p> <p>9 A. I mean each license is different.</p> <p>10 Q. Are you familiar with Section 101 of</p> <p>11 the Copyright Act?</p> <p>12 A. No.</p> <p>13 Q. Are you a member of A.F.T.R.A.?</p> <p>14 S.A.G.? Any of those?</p> <p>15 A. No, I'm not.</p> <p>16 Q. Are you familiar with the musicians'</p> <p>17 union, the American Federation of Musicians?</p> <p>18 A. Vaguely.</p> <p>19 Q. Well, you've had occasion through isn't</p> <p>20 one of the services that you offer is providing</p> <p>21 musicians for studio use by artists?</p> <p>22 A. Yes.</p> <p>23 Q. Don't those musicians belong to unions?</p> <p>24 A. Some may.</p> <p>25 Q. Don't they have to be paid union scale</p>	<p style="text-align: right;">[159]</p> <p>1 Douglas Berlent</p> <p>2 A. Yes, I am.</p> <p>3 Q. And you and Mr. Palladino - did you</p> <p>4 have a garage band or something when you were</p> <p>5 younger?</p> <p>6 A. We did.</p> <p>7 Q. See that. I kind of guessed that.</p> <p>8 And you never became a member of a</p> <p>9 musicians' union?</p> <p>10 A. I believe that we were members of the</p> <p>11 union very early in our career.</p> <p>12 Q. Okay. Did you come to learn, at any</p> <p>13 time, that my clients' music was being sold on</p> <p>14 Amazon?</p> <p>15 A. I did not know that until this</p> <p>16 litigation.</p> <p>17 Q. Did you come to learn how the music</p> <p>18 came to be available on Amazon?</p> <p>19 A. I came to understand that it was</p> <p>20 through the efforts of The Orchard.</p> <p>21 Q. Okay. And how did you come to that</p> <p>22 understanding? Who told you that?</p> <p>23 A. I don't recall, specifically.</p> <p>24 Q. Did you come to learn that the audio CD</p> <p>25 Songs For Dogs by Media Right Productions was being</p>
<p style="text-align: right;">[158]</p> <p>1 Douglas Berlent</p> <p>2 when they participate in making music?</p> <p>3 MR. SHELOWITZ: Objection.</p> <p>4 Irrelevance.</p> <p>5 You can answer.</p> <p>6 THE WITNESS: Oh.</p> <p>7 MR. SHELOWITZ: If you know</p> <p>8 the answer, yeah.</p> <p>9 THE WITNESS: No. As far</p> <p>10 as I know, they do not need to be</p> <p>11 paid union scale if they're not</p> <p>12 part of a musicians' union.</p> <p>13 Q. No. I'm talking about those who are</p> <p>14 union members?</p> <p>15 A. I'm not specific with the terms of the</p> <p>16 union.</p> <p>17 Q. Don't you know that the musicians who</p> <p>18 participate in making the Songs For Dogs and Songs</p> <p>19 For Cats have certain rights?</p> <p>20 A. I would not know that information.</p> <p>21 Q. How long have you been in the music</p> <p>22 business?</p> <p>23 A. About 20, 20 years or so.</p> <p>24 Q. And you're a musician, yourself; aren't</p> <p>25 you?</p>	<p style="text-align: right;">[160]</p> <p>1 Douglas Berlent</p> <p>2 offered on Amazon for \$15.98, new? Did you learn</p> <p>3 that?</p> <p>4 MR. SHELOWITZ: Objection</p> <p>5 to the form.</p> <p>6 MR. MONAGHAN: At any time?</p> <p>7 THE WITNESS: No, I can't</p> <p>8 say that I did learn that.</p> <p>9 Q. Well, when I say "learn that," learn it</p> <p>10 either from papers in the case? From verbal</p> <p>11 sources? From, actually, looking at amazon.com?</p> <p>12 A. I did not look at amazon.com. I did</p> <p>13 not recall hearing it from verbal sources that it</p> <p>14 was sold for \$15.00.</p> <p>15 Q. Don't hold me to the price. Just that</p> <p>16 it was on there?</p> <p>17 A. Yes, I did hear that it was on</p> <p>18 amazon.com.</p> <p>19 Q. Right. And being offered by Media</p> <p>20 Right Productions? Did you learn that, too?</p> <p>21 A. That was brought to my attention, yes.</p> <p>22 MR. SHELOWITZ: Objection</p> <p>23 to the form.</p> <p>24 Q. Okay. And do you have your own</p> <p>25 compositions available for sale on amazon.com?</p>

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<p>1 Douglas Berlent</p> <p>2 A. I would not know.</p> <p>3 Q. Did you know the full name of my</p> <p>4 clients' composition compilations, these at issue?</p> <p>5 A. I'm not sure I understand the question.</p> <p>6 Q. Well, the CD case that I have here is</p> <p>7 Songs For Dogs and then, parenthetically, "(and the</p> <p>8 people who love them)." Do you remember that being</p> <p>9 part of the name?</p> <p>10 A. I would not have remembered the</p> <p>11 parenthetical. Its been a long time since I've</p> <p>12 seen them.</p> <p>13 Q. And the same with Cats, Songs For Cats</p> <p>14 CD, and jewel case says "Songs For Cats (and the</p> <p>15 people who love them)"; same answer?</p> <p>16 A. Same answer.</p> <p>17 Q. You don't have occasion to go and</p> <p>18 monitor on amazon.com; do you? The Media Right</p> <p>19 Productions products and music that's being offered</p> <p>20 there, you don't do that from time to time?</p> <p>21 A. No.</p> <p>22 Q. Okay. I show you now Exhibit 12,</p> <p>23 Maxwell-12, which is a printout from amazon.com</p> <p>24 and, on the same page, it references Songs For Dogs</p> <p>25 (and the people who love them) by my client and</p>	<p>1 Douglas Berlent</p> <p>2 Productions?</p> <p>3 MR. SHELOWITZ: Objection</p> <p>4 to the form.</p> <p>5 Q. You knew that before today; didn't you?</p> <p>6 A. I knew that as part of the proceedings</p> <p>7 in this litigation that was brought to my</p> <p>8 attention.</p> <p>9 Q. Right. Did you go and check out how</p> <p>10 that came to be?</p> <p>11 A. No. I, personally, did not.</p> <p>12 Q. Well, did anyone on your behalf?</p> <p>13 A. I would assume that my Counsel did.</p> <p>14 MR. SHELOWITZ: By the</p> <p>15 way, we haven't seen any claim</p> <p>16 of copyright ownership by Media</p> <p>17 Right Productions anywhere.</p> <p>18 MR. MONAGHAN: You said</p> <p>19 that before, but we showed it</p> <p>20 to you in the Rule 26 production.</p> <p>21 MR. SHELOWITZ: I don't see</p> <p>22 any copyright ownership. Who says</p> <p>23 it's copyright ownership? I don't</p> <p>24 see anything where it says that.</p> <p>25 You're asking questions and assuming</p>
[162]	[164]
<p>1 Douglas Berlent</p> <p>2 then Songs For Dogs, Media Right Productions. You</p> <p>3 see those?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Okay. Did you ever claim a copyright</p> <p>6 ownership of my clients' products?</p> <p>7 A. No, I did not.</p> <p>8 Q. Can you tell us why it is on -- You</p> <p>9 reviewed the papers that were provided by the</p> <p>10 Plaintiffs in this case under their production of</p> <p>11 documents before you came here; didn't you?</p> <p>12 A. No, I cannot say that I did.</p> <p>13 (Plaintiffs' Exhibit</p> <p>14 Maxwell-15, one-page iTunes</p> <p>15 screen shot regarding Songs</p> <p>16 For Cats, marked for</p> <p>17 identification; Plaintiffs'</p> <p>18 Exhibit Maxwell-16, one-page</p> <p>19 iTunes screen shot regarding</p> <p>20 Songs For Dogs, marked for</p> <p>21 identification.)</p> <p>22 Q. Mr. Maxwell, are you saying, until I</p> <p>23 just asked you that question, you didn't know that</p> <p>24 there was a listing on iTunes of my clients' music</p> <p>25 with copyright claim by your company Media Right</p>	<p>1 Douglas Berlent</p> <p>2 facts that were not in evidence and</p> <p>3 not demonstrated.</p> <p>4 MR. MONAGHAN: Let me show</p> <p>5 you Maxwell-16. You've seen that</p> <p>6 before. That's in our Rule 26.</p> <p>7 MR. SHELOWITZ: Where does</p> <p>8 it say copyright?</p> <p>9 MR. MONAGHAN: Right where</p> <p>10 it's highlighted.</p> <p>11 MR. SHELOWITZ: Where?</p> <p>12 MR. MONAGHAN: Where</p> <p>13 there's a copyright symbol.</p> <p>14 MR. SHELOWITZ: I don't</p> <p>15 see. Okay. 2006. Okay.</p> <p>16 MR. MONAGHAN: Did I read</p> <p>17 that, correctly?</p> <p>18 MR. SHELOWITZ: It says</p> <p>19 "c 2006 Media Right."</p> <p>20 MR. MONAGHAN: That means</p> <p>21 copyright; doesn't it?</p> <p>22 MR. KORIK: Just to be</p> <p>23 accurate, it's circle p.</p> <p>24 MR. SHELOWITZ: What's</p> <p>25 circle p?</p>

<p style="text-align: right;">[165]</p> <p>1 Douglas Berlent</p> <p>2 MR. KORIK: Photographic</p> <p>3 recording copyright.</p> <p>4 MR. SHELOWITZ: News to us.</p> <p>5 Okay.</p> <p>6 Q. You had no right to claim copyright</p> <p>7 ownership of these compositions; did you?</p> <p>8 A. No, I did not.</p> <p>9 Q. You had no right to give copyright</p> <p>10 rights to anyone else, either; did you?</p> <p>11 A. No, I did not.</p> <p>12 Q. And is it your testimony that you did</p> <p>13 not authorize The Orchard to make copies?</p> <p>14 A. I'm not sure I understand the question.</p> <p>15 Q. Did you authorize The Orchard to make</p> <p>16 copies of my clients' music?</p> <p>17 A. I authorized them to market that music.</p> <p>18 Q. Did you authorize The Orchard to allow</p> <p>19 copyright claims to be made by either you, Media</p> <p>20 Right, or by The Orchard?</p> <p>21 A. No, I did not authorize them to make</p> <p>22 copyright claims.</p> <p>23 Q. And I show you now Exhibit 15 with the</p> <p>24 same copyright claim by The Orchard on iTunes.</p> <p>25 Have you seen that before?</p>	<p style="text-align: right;">[167]</p> <p>1 Douglas Berlent</p> <p>2 Q. Does The Orchard claim copyright, the</p> <p>3 same way it did -- I'm sorry. iTunes, does iTunes</p> <p>4 have a listing on a screen shot for any of your</p> <p>5 compositions that indicates someone other than you,</p> <p>6 as, for example, The Orchard, has rights in your</p> <p>7 music?</p> <p>8 A. I would not know that.</p> <p>9 Q. You were present at the mediation; were</p> <p>10 you not?</p> <p>11 A. Yes, I was.</p> <p>12 Q. Okay. Did you hear Mr. Korik talk</p> <p>13 about this subject matter at the mediation, this</p> <p>14 issue of claiming of copyrights?</p> <p>15 Didn't you talk about that?</p> <p>16 A. I don't recall the specifics of what he</p> <p>17 said.</p> <p>18 Q. Did you have occasion to ever go back</p> <p>19 to The Orchard and say how is it that this is being</p> <p>20 sold on iTunes, indicating a copyright in Songs For</p> <p>21 Cats and I, Media Right Productions, have a</p> <p>22 copyright in Songs For Dogs? Did you ever take</p> <p>23 that up with anybody at The Orchard?</p> <p>24 A. No, I did not.</p> <p>25 Q. Was there a reason you didn't?</p>
<p style="text-align: right;">[166]</p> <p>1 Douglas Berlent</p> <p>2 MR. SHELOWITZ: Again, this</p> <p>3 is --</p> <p>4 MR. MONAGHAN: -- very hard</p> <p>5 to see.</p> <p>6 MR. SHELOWITZ: It's an</p> <p>7 iTunes screen shot. There's a</p> <p>8 "p" with a circle that says</p> <p>9 2000 Orchard. Under there is</p> <p>10 an image Songs For Cats.</p> <p>11 THE WITNESS: I'm not</p> <p>12 seeing it. I have not gone</p> <p>13 to iTunes.</p> <p>14 Q. Did you allow for the possibility, when</p> <p>15 you gave the titles to The Orchard by that</p> <p>16 February 1, 2000 communication with Sam Perlman,</p> <p>17 did you allow for the possibility that you were now</p> <p>18 putting this music out there on the Internet and</p> <p>19 that anyone could make use of this? Did you know</p> <p>20 that was possible?</p> <p>21 A. I don't recall.</p> <p>22 Q. How about your own music, has anyone</p> <p>23 claimed a copyright to your music, other than</p> <p>24 yourself?</p> <p>25 A. Not that I know of.</p>	<p style="text-align: right;">[168]</p> <p>1 Douglas Berlent</p> <p>2 A. I didn't know about it.</p> <p>3 Q. Were you aware that digital copies of</p> <p>4 my clients' music were being sold, on-line?</p> <p>5 A. At what point?</p> <p>6 Q. Any point?</p> <p>7 A. During the process of this litigation,</p> <p>8 yes.</p> <p>9 Q. Well, I think you told us, when I asked</p> <p>10 you about the Product Representation Agreement,</p> <p>11 that the phrase "internet sites" to you meant and</p> <p>12 included The Orchard; right?</p> <p>13 A. Correct.</p> <p>14 Q. And did that, also, include or subsume</p> <p>15 in it places like iTunes?</p> <p>16 A. It evolved to include that.</p> <p>17 Q. So, that's the way iTunes sells the</p> <p>18 tunes? Isn't it through digital downloading?</p> <p>19 A. Yes.</p> <p>20 Q. So then we can assume, correctly, that</p> <p>21 you assumed at the time it did include the right to</p> <p>22 digital download when you gave the tiles to The</p> <p>23 Orchard?</p> <p>24 A. Yes, I did assume that.</p> <p>25 Q. And when did you ever have a</p>

<p style="text-align: right;">[169]</p> <p>1 Douglas Berlent</p> <p>2 conversation with Ellen Bernfeld in which the</p> <p>3 subject of digital downloading through iTunes was</p> <p>4 discussed?</p> <p>5 A. We did not have this discussion through</p> <p>6 iTunes because iTunes did not exist at the time,</p> <p>7 but I do recall that we did discuss Internet and</p> <p>8 digital dissemination.</p> <p>9 Q. What about MSN Music; are you familiar</p> <p>10 with that?</p> <p>11 A. No, I'm not.</p> <p>12 Q. MusicMatch, are you familiar with that?</p> <p>13 A. No, I'm not.</p> <p>14 Q. Any of the following: MusicNet,</p> <p>15 MusicNet Canada, MusicNow and RealNetworks?</p> <p>16 A. No.</p> <p>17 Q. Are you aware, sir, that as recently as</p> <p>18 January of 2007, The Orchard was still showing</p> <p>19 Songs For Cats with your company listed as the</p> <p>20 artist?</p> <p>21 A. No, I was not.</p> <p>22 MR. MONAGHAN: Can we</p> <p>23 mark that.</p> <p>24 (Plaintiffs' Exhibit</p> <p>25 Maxwell-17, one-page screen shot</p>	<p style="text-align: right;">[171]</p> <p>1 Douglas Berlent</p> <p>2 wasn't open to individual one record at a time.</p> <p>3 Q. Did you change the UPC code on Songs</p> <p>4 For Dogs and Songs For Cats?</p> <p>5 A. No, I did not.</p> <p>6 Q. Do you know if there are different UPC</p> <p>7 codes for those, the very same product?</p> <p>8 A. I never looked.</p> <p>9 Q. On the exhibit, the Sam Perlman letter</p> <p>10 which is Exhibit 4, I show you Maxwell Exhibit 4</p> <p>11 right here. I show you --</p> <p>12 MR. SHELOWITZ: This is</p> <p>13 the letter from Media Right</p> <p>14 Productions to The Orchard.</p> <p>15 THE WITNESS: Okay.</p> <p>16 Q. You see the bar code up on the top;</p> <p>17 right?</p> <p>18 A. I see a physical blur.</p> <p>19 Q. Okay. Well, I'll represent to you it's</p> <p>20 a bar code.</p> <p>21 A. Okay.</p> <p>22 Q. Who put that there?</p> <p>23 A. I do not know.</p> <p>24 Q. And, beneath that bar code, it says,</p> <p>25 "Media Right Productions, Songs For Dogs." Doesn't</p>
<p style="text-align: right;">[170]</p> <p>1 Douglas Berlent</p> <p>2 regarding "The Orchard, Release</p> <p>3 Info.," marked for identification.)</p> <p>4 Q. Did you tell The Orchard that you were</p> <p>5 the record label for Songs For Cats and Songs For</p> <p>6 Dogs?</p> <p>7 A. I don't recall using the specific term</p> <p>8 "record label."</p> <p>9 Q. Well, can you explain how it is, if you</p> <p>10 can mark those, that The Orchard is showing your</p> <p>11 company as the record label?</p> <p>12 A. From what I recall, and I believe it's</p> <p>13 still to be the case, the only way to get onto The</p> <p>14 Orchard, even back in its earliest days, was to be</p> <p>15 a record label. In other words, not an artist with</p> <p>16 one record but to have more than one record, and</p> <p>17 that was, specifically, what Russ was referring</p> <p>18 Ellen to me about because we did have those titles</p> <p>19 under the Media Right, quote, "label." That was</p> <p>20 all my music and all me and Songs For Cats and</p> <p>21 Songs For Dogs was included in that batch of music</p> <p>22 that was sent to The Orchard.</p> <p>23 So, that is, most likely, why it was</p> <p>24 put under the Media Right label because you'd have</p> <p>25 to double-check me on it, but I believe that it</p>	<p style="text-align: right;">[172]</p> <p>1 Douglas Berlent</p> <p>2 that mean that that's your bar code with your UPC</p> <p>3 on this letter that you sent to Sam Perlman?</p> <p>4 A. That was not on the letter that I sent</p> <p>5 to Sam Perlman.</p> <p>6 Q. You produced this. How did it get to</p> <p>7 us?</p> <p>8 A. That was provided, as far as I know, by</p> <p>9 The Orchard because I did not have a copy of that</p> <p>10 letter. So, that could have been attached by them,</p> <p>11 but I have no knowledge of how it was put there.</p> <p>12 Q. Well, since we didn't get it until you</p> <p>13 produced it in this case, would you agree the only</p> <p>14 possibilities are (a) you put it there or The</p> <p>15 Orchard put it there?</p> <p>16 A. I would not agree to that because I do</p> <p>17 not know how it got there.</p> <p>18 Q. Well, do you have a bar code that you</p> <p>19 use on your properties?</p> <p>20 A. I used to. I don't think it's,</p> <p>21 currently, functioning nor have I renewed it,</p> <p>22 probably, for many years.</p> <p>23 Q. What would the function of this bar</p> <p>24 code that says "Media Right Productions," beneath</p> <p>25 it, Songs For Dogs, be?</p>

<p style="text-align: right;">[173]</p> <p>1 Douglas Berlent</p> <p>2 MR. SHELOWITZ: Objection</p> <p>3 to the form. He testified he</p> <p>4 doesn't know how it got there.</p> <p>5 MR. MONAGHAN: That's not</p> <p>6 the same question as what would</p> <p>7 it be used for.</p> <p>8 MR. SHELOWITZ: If you know?</p> <p>9 THE WITNESS: What would a</p> <p>10 bar code, in general, be used</p> <p>11 for?</p> <p>12 MR. MONAGHAN: No. This</p> <p>13 bar code?</p> <p>14 THE WITNESS: I don't know</p> <p>15 because I didn't put it there.</p> <p>16 Q. Isn't it a fact that's your bar code?</p> <p>17 A. I don't know. I don't know what my bar</p> <p>18 code is.</p> <p>19 Q. How would you be able to find out?</p> <p>20 A. You could take a physical copy of one</p> <p>21 of my albums and look at my bar code.</p> <p>22 Q. Okay. Is the bar code on anything we</p> <p>23 have?</p> <p>24 MR. KORIK: Sometimes, it's</p> <p>25 on the Amazon listings.</p>	<p style="text-align: right;">[175]</p> <p>1 Douglas Berlent</p> <p>2 clients' music Songs For Dogs is available now for</p> <p>3 listening at no cost at a site known as "Rhapsody"?</p> <p>4 A. I'm not aware of that.</p> <p>5 Q. Well, do you know of any way it would</p> <p>6 have gotten on the site to be available to be</p> <p>7 listened to other than through The Orchard?</p> <p>8 A. Do I know of any other way that it</p> <p>9 could have gotten on the site?</p> <p>10 Q. That's right.</p> <p>11 A. I'm sure there are other ways to do it,</p> <p>12 yes.</p> <p>13 Q. Okay.</p> <p>14 A. Do I know how to? No.</p> <p>15 MR. MONAGHAN: I don't</p> <p>16 have any more questions at</p> <p>17 this time. There may be</p> <p>18 further occasion, depending</p> <p>19 on other discovery in the</p> <p>20 case of documents that are</p> <p>21 forthcoming from you or some</p> <p>22 other party or deposition</p> <p>23 testimony that may require</p> <p>24 you to come back and be</p> <p>25 questioned further.</p>
<p style="text-align: right;">[174]</p> <p>1 Douglas Berlent</p> <p>2 MR. MONAGHAN: Yeah. Let's</p> <p>3 see.</p> <p>4 THE WITNESS: Music For</p> <p>5 Lovemaking, for example.</p> <p>6 MR. KORIK: No. Amazon</p> <p>7 assigns its own bar code.</p> <p>8 Q. Would you agree with me, Mr. Maxwell,</p> <p>9 that in any instance where these products were</p> <p>10 listed and a copyright notice was indicated either</p> <p>11 with a c or with a p, it should have shown my</p> <p>12 clients as the copyright owners?</p> <p>13 A. Yes, it should have.</p> <p>14 Q. Are you familiar with an Internet site</p> <p>15 known as "Rhapsody"?</p> <p>16 A. No, I'm not.</p> <p>17 Q. Are you aware of any instance where</p> <p>18 music is available free of charge on the Internet?</p> <p>19 A. Yes.</p> <p>20 Q. And how is that? How would one go</p> <p>21 about getting that free music? Where do they go?</p> <p>22 What sites?</p> <p>23 A. I've never done it, but I, certainly,</p> <p>24 am aware of the case of Napster.</p> <p>25 Q. Okay. Now, are you aware of that my</p>	<p style="text-align: right;">[176]</p> <p>1 Douglas Berlent</p> <p>2 MR. SHELOWITZ: I have a</p> <p>3 few questions, if I may?</p> <p>4 MR. MONAGHAN: Sure.</p> <p>5 EXAMINATION BY</p> <p>6 MR. SHELOWITZ:</p> <p>7 Q. I'm just going to ask a few questions,</p> <p>8 Mr. Maxwell. The same instruction, answer to the</p> <p>9 best of your knowledge.</p> <p>10 Did you ever sell any music of the</p> <p>11 Plaintiffs that you've been shown today on</p> <p>12 amazon.com?</p> <p>13 MR. MONAGHAN: Objection</p> <p>14 as a leading question from his</p> <p>15 own lawyer.</p> <p>16 Q. Did you, personally or through Media</p> <p>17 Right Productions, ever sell any Dogs and Cats CDs</p> <p>18 on amazon.com?</p> <p>19 A. No, I did not.</p> <p>20 Q. Did you ever sell any of the Dogs and</p> <p>21 Cats CDs on any other on-line marketplace?</p> <p>22 A. No, I did not.</p> <p>23 Q. Earlier, in the questions, Mr. Monaghan</p> <p>24 showed you some exhibits that showed what looked</p> <p>25 like a p and a circle around it and the word</p>

<p style="text-align: right;">[177]</p> <p>1 Douglas Berlent</p> <p>2 "Mediaright" on web pages showing the Plaintiffs'</p> <p>3 music or CDs; do you recall that?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Do you know how those, if it is a p</p> <p>6 with a circle and how it got there?</p> <p>7 A. I have no idea.</p> <p>8 Q. Did you ever authorize anyone to show</p> <p>9 copyright ownership whether a c with a circle or a</p> <p>10 P with a circle related to any of the music that</p> <p>11 was produced, composed and contained in any of</p> <p>12 those?</p> <p>13 A. No, I did not.</p> <p>14 Q. Did you ever represent that you were</p> <p>15 the copyright owner regarding any of the music of</p> <p>16 Plaintiffs?</p> <p>17 A. No, I did not.</p> <p>18 Q. Did you ever copy in any form</p> <p>19 whatsoever, either you or Media Right Productions,</p> <p>20 any of the CDs or tapes that the Plaintiffs had</p> <p>21 shown us today as Exhibits 8, 9, 10, 9A or 8A?</p> <p>22 A. No, I did not.</p> <p>23 Q. Did you ever --</p> <p>24 MR. MONAGHAN: This is</p> <p>25 improper. Objection. Excuse me.</p>	<p style="text-align: right;">[179]</p> <p>1 Douglas Berlent</p> <p>2 Productions were the artist that created, composed</p> <p>3 or recorded any of the music that Plaintiffs claim</p> <p>4 are set forth in those exhibits today?</p> <p>5 A. No, I did not.</p> <p>6 MR. SHELOWITZ: Thank you.</p> <p>7 We have no questions.</p> <p>8</p> <p>9</p> <p>10 Douglas Berlent</p> <p>11 Sworn to before me this</p> <p>12 day of</p> <p>13 2008.</p> <p>14</p> <p>15</p> <p>16 Notary Public</p> <p>17 * * *</p> <p>18 E X H I B I T S</p> <table border="0"> <tr> <td>19 Plaintiffs' Description</td> <td>Page</td> </tr> <tr> <td>20 Maxwell-1 One-page document entitled</td> <td>40</td> </tr> <tr> <td>21 "Recording a 'demo' CD"</td> <td></td> </tr> <tr> <td>22 Maxwell-2 Two-page document entitled</td> <td>45</td> </tr> <tr> <td>23 "Media Right Productions"</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </table>	19 Plaintiffs' Description	Page	20 Maxwell-1 One-page document entitled	40	21 "Recording a 'demo' CD"		22 Maxwell-2 Two-page document entitled	45	23 "Media Right Productions"		24		25																															
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<p style="text-align: right;">[178]</p> <p>1 Douglas Berlent</p> <p>2 MR. SHELOWITZ: I'm entitled</p> <p>3 to cross-examine, ask the questions.</p> <p>4 MR. MONAGHAN: Let me get my</p> <p>5 objection on the record.</p> <p>6 MR. SHELOWITZ: Please.</p> <p>7 MR. MONAGHAN: Cross-examination</p> <p>8 of your own client is limited to</p> <p>9 correction of some answer that was</p> <p>10 given, amplification of an answer.</p> <p>11 It's not to make a case.</p> <p>12 If you want to make a case,</p> <p>13 you call him as a witness in the</p> <p>14 trial in the case. It's not let's</p> <p>15 go through the whole thing.</p> <p>16 MR. SHELOWITZ: I have one</p> <p>17 more question.</p> <p>18 MR. MONAGHAN: Good.</p> <p>19 MR. SHELOWITZ: I'm asking</p> <p>20 questions you omitted in your</p> <p>21 questioning. I think they're</p> <p>22 relevant and important so that</p> <p>23 the record is, absolutely, clear.</p> <p>24 Q. Did you ever represent to anyone,</p> <p>25 Mr. Maxwell, that either you or Media Right</p>	<p style="text-align: right;">[180]</p> <p>1 Douglas Berlent</p> <p>2 E X H I B I T S</p> <p>3 (Continued)</p> <table border="0"> <tr> <td>4 Plaintiffs' Description</td> <td>Page</td> </tr> <tr> <td>5 Maxwell-3 Two-page document entitled</td> <td>52</td> </tr> <tr> <td>6 "Product Representation</td> <td></td> </tr> <tr> <td>7 Agreement"</td> <td></td> </tr> <tr> <td>8 Maxwell-4 One-page letter dated</td> <td>52</td> </tr> <tr> <td>9 February 1, 2000</td> <td></td> </tr> <tr> <td>10 Maxwell-5 Two-page document which</td> <td>53</td> </tr> <tr> <td>11 states at the top</td> <td></td> </tr> <tr> <td>12 "From: The Orchard"</td> <td></td> </tr> <tr> <td>13 Maxwell-6 Excel spreadsheet</td> <td>53</td> </tr> <tr> <td>14 Maxwell-7 A document entitled "Songs</td> <td>68</td> </tr> <tr> <td>15 For Cats/Songs For Dogs"</td> <td></td> </tr> <tr> <td>16 and Bates-stamped 1 through</td> <td></td> </tr> <tr> <td>17 32</td> <td></td> </tr> <tr> <td>18 Maxwell-8 A CD entitled "Songs For</td> <td>68</td> </tr> <tr> <td>19 Dogs (and the people who</td> <td></td> </tr> <tr> <td>20 love them)"</td> <td></td> </tr> <tr> <td>21 Maxwell-9 A CD entitled "Songs For</td> <td>68</td> </tr> <tr> <td>22 Cats (and the people who</td> <td></td> </tr> <tr> <td>23 love them)"</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </table>	4 Plaintiffs' Description	Page	5 Maxwell-3 Two-page document entitled	52	6 "Product Representation		7 Agreement"		8 Maxwell-4 One-page letter dated	52	9 February 1, 2000		10 Maxwell-5 Two-page document which	53	11 states at the top		12 "From: The Orchard"		13 Maxwell-6 Excel spreadsheet	53	14 Maxwell-7 A document entitled "Songs	68	15 For Cats/Songs For Dogs"		16 and Bates-stamped 1 through		17 32		18 Maxwell-8 A CD entitled "Songs For	68	19 Dogs (and the people who		20 love them)"		21 Maxwell-9 A CD entitled "Songs For	68	22 Cats (and the people who		23 love them)"		24		25	
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[181]				[183]			
1	Douglas Berlent			1	Douglas Berlent		
2	E X H I B I T S			2	REQUEST FOR PRODUCTION		
3	(Continued)			3	(Continued)		
4	Plaintiffs'	Description	Page	4	Page	Line	Description
5	Maxwell-10	A CD entitled "Songs For	68	5	32	9	Any records that would show payments
6		Dogs (and the people who		6			that were received by the company
7		love them)," 10 original		7			with respect to digital downloads
8		songs on CD and a fully		8			from the year 1999 on
9		illustrated book		9			
10	Maxwell-8A	A cassette entitled "Songs	82	10			
11		For Dogs"		11			
12	Maxwell-9A	A cassette entitled "Songs	83	12			
13		For Cats"		13			
14	Maxwell-10	Two-page amazon.com screen	109	14			
15		shot		15			
16	Maxwell-11	Three-page rhapsody.com	109	16			
17		screen shot		17			
18	Maxwell-12	Two-page amazon.com screen	109	18			
19		shot		19			
20	Maxwell-13	Multipage document entitled	110	20			
21		"The Orchard, Digital & CD		21			
22		Distribution"		22			
23	Maxwell-14	Two-page document entitled	112	23			
24		"Elias' Links &		24			
25		Acknowledgements"		25			

[182]				CERTIFICATION			
1	Douglas Berlent						
2	E X H I B I T S						
3	(Continued)						
4	Plaintiffs'	Description	Page	I, Kathryn Lebeau, a Stenotype Reporter and Notary Public within and for the State of New York, hereby certify:			
5	Maxwell-15	One-page iTunes screen shot	162				
6		regarding Songs For Cats		That the witness whose examination is hereinbefore set forth was duly sworn by a Notary Public and that the transcript of examination is a true record of the testimony given by the said witness; and			
7	Maxwell-16	One-page iTunes screen shot	162				
8		regarding Songs For Dogs		That I am not related to any of the parties to this action by blood or marriage and I am in no way interested in the outcome of this matter.			
9	Maxwell-17	One-page screen shot	169				
10		regarding "The Orchard,		Kathryn Lebeau			
11		Release Info."					
12		* * *					
13	INFORMATION TO BE SUPPLIED						
14	Page	Line	Description				
15	52	7	Whether the witness has a copy of the				
16			Product Representation Agreement with				
17			regard to Smokin' Sounds, and, if so,				
18			the production of it				
19			* * *				
20	REQUEST FOR PRODUCTION						
21	Page	Line	Description				
22	27	25	Mr. Maxwell's statements that would				
23			reflect payments he's received				
24			through The Orchard for digital				
25			downloading for the last year				

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